

Victorian Co-operative News

Bulletin of the Co-operative Federation of Victoria Ltd

Volume 3 Issue 4

Autumn 1997

New Co-operatives Act soon to become law

The Victorian *Co-operatives Act 1996*, passed by State Parliament last year, is expected to become law before the end of September.

The new Act will come into force once the accompanying regulations are finalised. The regulations will be released for public comment shortly.

Upon the Act becoming law, all co-operatives registered under the *Co-operation Act 1981* and *Housing Act 1983* will be transferred to the new Act. For those co-operatives wishing to expand interstate, the national scheme is expected to be in place by the end of the year. The other states are progressing toward finalising their

new co-operatives' acts, which are modelled on the Victorian Act.

New requirements

The new Act contains many new provisions that will affect all co-operatives registered in Victoria. The Co-operative Federation of Victoria is preparing a series of *Fact Sheets* detailing the new requirements and will hold seminars on the new Act within the next 4 months.

The following is a brief summary of a number of the new requirements.

Status of existing co-operatives

Existing producers and trading

societies with rules that provide for the distribution of surplus to members will be *trading* co-operatives. This type of co-operative is subject to new disclosure requirements in relation to raising funds from members.

Community advancement societies, community settlement societies, rental housing co-operatives, associations and federations with rules that do not distribute surpluses to members will be *non trading* co-operatives. This type of co-operative is subject to less onerous requirements in relation to fundraising from members.

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National Competition Policy and Co-operatives

Extract from a speech given by Bill Dee, Director Liaison, Australian Competition and Consumer Commission to the 1996 NSW Researchers Forum.

As a result of the implementation of the National Competition Policy, since July last year the Trade Practices Act applies to all co-operatives.

The Act does not specifically refer to co-operatives, rather it treats them in the same manner as other forms of business structures which are subject to the Act.

Co-operatives are normally formed to:

- enhance the bargaining position of members so that they can deal on better terms, including price, than they could achieve individually with their customers and suppliers; and
- enable members to add value to their produce.

"In this changing environment it is important for all industry participants to be aware of the Trade Practices Act and the obligations and benefits it has for both co-operatives and other businesses alike."

There are several areas where the activities of co-operatives or their members require special care to be taken to ensure that the conduct does not contravene the Act. These areas include:

- the agreement to form the co-op;
- the rules the co-operative imposes on its members; and
- mergers between co-operatives.

A co-operative by its very nature represents an agreement between

competitors and, as such, may have anti-competitive consequences, in that the agreement to form the co-operative may, for example, lead to a **substantial lessening of competition**.

The process of authorisation contained in the Act, however, provides protection from action by the Commission or any other party for potential breaches of certain restrictive trade practices provisions of the Act. Authorisation is granted only where the benefits to the public result from the conduct and the detriments resulting from the conduct, including the lessening of competition, are outweighed by those benefits.

In considering the matter, the Commission would look closely at the rules of the co-operative, particularly restrictions on the ability of members to supply to customers other than via the

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International Study Tour for Agricultural Marketing Co-operatives 4 - 19 October 1997

Michael O'Keefe, Chief Manager of Advisory and Research Studies, Rabo Australia Limited, will be leading the study tour for directors and senior managers to Indonesia, Thailand, UK and Holland. The program builds on three previous study tours organised by Michael O'Keefe and the Monash University's Agribusiness Research Unit. The program has new features including doing business in Asia.

For enquires contact Michael O'Keefe
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Competition policy

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co-operative. Similarly, the Commission would also be concerned if contracts between a co-operative and those who buy from it tie the buyers to purchasing exclusively from the co-operative.

Any adverse effects on competition would likely to be abated if the rules of the co-operative allowed members access to an independent, low cost appeals mechanism, for dispute resolution purposes.

For example, if a member were to increase its market share to the apparent detriment of other members because of some innovation that the member has developed or entrepreneurial flair, then the independent appeals mechanism would prevent other members of the co-operative seeking to inappropriately constrain, discipline, or even expel the innovative member.

Given the potential for breaches of the competition provisions of the Trade Practices Act to occur the prudent thing for the board of any co-operative would be to have both its rules and business practices checked by a trade practices expert to ensure that its practices are not in breach of the Act or to see if the is sufficient grounds for authorisation if the rules or conduct put the co-operative at risk. □

Mr Dee's speech is available to members from the Federation.

New requirements under Co-ops Act

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Rules

Existing rules are deemed to be valid until a co-operative complies with the requirement to update their rules within 2 years from the start of the Act. If there is any inconsistency between a provision of the Act and the rules as to the procedure for the alteration of the rules, the provision of the Act prevails.

Active membership

An important new feature is active membership. Within 2 years from the start of the Act, all co-operatives will be required to identify a primary activity or activities in its rules and to relate membership to its activities.

Status of existing members

The membership profile of most co-operatives are those members who use services of the co-operative regularly (active), irregularly (active/inactive?), not at all (inactive), deceased, and those who cannot be found.

Due to restrictions on company membership in the *Co-operation Act 1981*, there may also be members who are nominees of a trading company. The new Act allows co-operatives to have corporate members.

Sorting members into the 6 categories above will assist co-operatives in identifying those members who should be deemed active or inactive, who are deceased or untraceable, or who may need to have their shares transferred to their trading company.

New members

From the commencement of the Act, each person intending to become a member must be provided with:

- a consolidated copy of the rules;
- all special resolutions applicable to the member passed by the co-operative (except those relating to rule changes);
- a copy of last annual report.

Once the active membership provisions are in the rules, applicants must qualify for membership in accordance with the provisions.

Directors duties and liabilities

The duties and liabilities of directors, officers and employees are spelt out in the Act and have been expanded to reflect Corporation Law standards. The new Act allows co-operatives to indemnify officers and auditors in certain circumstances.

Special resolutions

The provisions relating to special resolutions have changed. Most special resolutions will now require a 66% majority (reduced from 75%). Special resolutions conducted by special postal ballot remains at 75%.

The co-operative must give at least 28 days notice to the Registrar of a proposed special resolution before giving notice to members, and at least 21 days notice to members. The notices must specify those matters outlined in the Act.

Accounting & audit requirements

It is unlikely that the regulations relating to accounting and audit will be finalised before the commencement of the new Act.

Part VI of the *Co-operation Act 1981* continues to apply to a co-operative that has transferred from the above Act and the *Housing Act 1983* until the end of the financial year of that co-operative next following the commencement of the Act.

Also, Divisions 5 & 6 of Part 9 of the new Act, which relates to registers, records and returns, do not apply to a transferred co-operative during the period that Part VI of the *Co-operation Act 1981* applies to it. □

□ **The Co-operatives Act 1996 is now available from Information Victoria, 356 Collins Street, Melbourne, 3000, telephone 1300 366356 for \$27 inc postage.**

New opportunities for co-ops

The Co-operative Opportunities Project, an initiative of the Co-operative Federation of Victoria, has released a further two discussion papers on health and forestry co-operatives. The papers were written by Vern Hughes.

Health co-operatives

There is a growing interest around the world in health care co-operatives. This interest has been driven, the paper says, by a perceived recognition that both the public and private sectors have disappointing records in providing such services.

The paper argues that there is a third option for health care which is distinct from the traditional public and private sectors. This option is based on the aggregation of health consumers through co-operatives. It says the co-operative model lends itself well to the provision of consumer-focused health care and identifies five models:

- primary care co-operatives;
- community hospital co-ops;
- health services and products purchasing co-operatives;
- health insurance co-operatives;
- integrated provision co-operatives.

The paper identifies a number of strategic partners that may wish to enter into alliances with existing or new co-operatives to provide health services, including voluntary associations and church organisations.

Forestry co-operatives

The paper on farm forestry argues that co-operatives are an ideal structure to bring economies of scale to farm tree production.

The key to viability for plantation forestry, the paper says, is the aggregation of management, marketing and operational functions. The paper outlines a number of options for new and existing co-operatives to facilitate the development of farm forestry.

For copies of the discussions papers or details of the project, contact Vern Hughes on (03) 9314 7235. □

□ Assisted by a project grant under the Commonwealth Farm Forestry Program, Australian Forest Growers has commissioned Tony Gill, Secretary of the Co-operative Federation of Victoria, to produce a *Starter Kit for a Treegrowers Co-operative*. For information on the project, contact Tony on telephone 019 176 372.

ASX plan for a secondary market for co-ops

The Australian Stock Exchange has released a discussion paper on the listing of co-operatives and companies that were co-operatives, but have converted to companies.

The ASX proposal is a response to the problem of some co-operatives and 'converted' co-operatives having a greater need for capital than their members can meet.

The ASX argues that, in many cases, the only realist way to gain access to the necessary capital is from an external source. However, special historical characteristics and current requirements make it difficult, if not impossible, for them to meet the standard listing requirements.

ASX believes there are benefits for the economy in having a transparent secondary market (with some structural restrictions) rather than having a series of exempt markets in operation that are less transparent, or no secondary market at all.

The paper includes a draft Guidance Note which addresses control issues and differences in legislation. □

□ The Federation has organised a meeting on 6 June for interested co-operatives and companies to discuss the proposal with the ASX.

For details of the meeting and a copy of discussion paper, contact Tony Gill on (03) 5345 7466.

Co-operative News on the Internet

Co-operative Energy Ltd has begun an email news service **CooperativeN-I**, which is endorsed by the Co-operative Federation of Victoria and the International Co-operative Alliance.

CooperativeN-I is a unique source of local, national and international news on the Internet from and about co-operatives and co-operation, with subscribers invited to contribute news and feedback on news. Co-operatives can receive news or post their news releases either in full or edited extracts by first subscribing to the list on majordomo@peg.apc.org.

News should then be posted on CooperativeN-1@peg.apc.org. (The **I** in **CooperativeN-I** is a small **L**). □

New package to protect ex-directors

A NSW legal firm with co-operative clients has produced a package of documents to protect ex-directors in the event of them being sued for events that happened while a director of a co-operative. The risk of action hangs over an ex-director head for up to 7 years after retirement. Despite this continuing risk, on retirement, an ex-director will generally not have the benefit of the indemnities under the co-operatives rules, may not retain the benefit of the co-operative's Directors and Officers' Insurance Policy and will have no common law to access co-operative documents. For further information on the package, contact the Federation on (03) 5345 7466. □

National CO-OP UPDATE

The March/April edition of *National Co-op Update* is now out and is packed with news from across the nation and around the world:

Co-operative governance.
Advantages of co-operatives.
Health care and forestry co-ops.
A hypothetical case study on the succession of co-operative managers.
Co-operative news from around Australia and the world, and more.

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In brief

New members

The Board of Directors welcomes the following new members of the Federation:

Ballarat Taxis Co-operative Ltd
Central Sires Co-operative Ltd
Phoenix Management Co-operative Ltd
Rural Industries Co-operative Ltd
Terang & District Co-operative Society Ltd
Warm Corners Co-operative Ltd
Wombat Co-operative Ltd

Board appoints new directors

The Board has accepted with regret, the resignations of **Mr Dan McMullan** and **Mr Ken Chester**, who have served as directors of the Federation for the past four years. Both have recently retired from their respective boards. The Board paid tribute to their contribution to the Federation and the co-operative movement.

Mr Graeme Andrews of South Gippsland A.B. Co-operative Ltd and **Ms Liz Pearcey** of Phoenix Management Co-operative Ltd have filled the vacancies. The Directors invite members to nominate their delegates for the remaining two vacancies on the Board. For further information contact the secretary on (03) 5345 7466.

Co-operatives Council of Aust

Mr Jim Howard, Executive Director of the Co-operative Federation of Queensland, has been elected President of the Council for the next 2 years. He replaces Frank O'Connor from Western Australia. Jim is also a business consultant and was a former Queensland Registrar of Primary Producers' Cooperative Associations. Issues under consideration by the Council include:

- amendments to co-operative legislation;
- improving the image of co-operatives;
- future taxation policy;
- effect of competition policy on co-operatives.

The Council also proposes to hold a national conference in Canberra during the first half of 1998. The next meeting of the Council will be held in Melbourne on 15 July.

Rural Communities Conference

The Centre for Rural Communities in Gippsland is planning to hold a two conference in October with funds from the Reichstein Foundation. The aim of the conference is to establish ongoing regional networks for co-operatives in rural areas. The Federation has agreed to jointly sponsor the conference. A proposal will be put to the next planning meeting on 5 June.

Community co-operatives act to survive

Federal government funding cuts have forced child care and aboriginal co-operatives to reassess their futures. The community child care sector is looking at ways to achieve efficiencies without affecting quality of care and parental control. Aboriginal co-operatives are looking at sharing resources with other aboriginal organisations in their regions, following the withdrawal of administrative support to the co-operatives.

Your Federation at Work

Information on new act

The preparation of *Fact Sheets* on the new act is well advanced. The *Fact Sheets* will address in simple terms the requirements that affect the operations of co-operatives. The *Fact Sheets* will be available free of charge to members of the Federation and for a fee of up to \$20 per sheet for non members.

The Federation is also planning to hold seminars on the new act in Ballarat, Shepparton, Traralgon and Melbourne before October.

Review of associations act

The Federation has responded to an invitation by the Office of Fair Trading to comment on proposed changes to the *Associations Incorporation Act*.

Review of public housing

The Victorian Office of Housing has announced that it prefers public companies to manage government owned and community managed housing stock, because of the high standards of probity under the Corporations Law. There are 21

housing co-operatives managing 756 public owned houses in Victoria. The Federation has written to the Minister for Housing arguing that the new *Co-operatives Act* places comparable standards on co-operatives, and that a co-operative should not be excluded from tendering for the management of public housing stock because of its corporate structure.

Co-operatives & health care

The Federation plans to hold a seminar later this year on co-operative options for small hospitals, primary care and community health services. The initiative follows interest in the Federation's recent discussion paper on health care.

The Board has also established a task group to explore possibilities for co-operative involvement in health insurance. Contact Vern Hughes on (03) 9314 7235 for details.

New Opportunities Seminar

The Federation will be holding a new opportunities seminar preceding the 1997 annual meeting in the latter half of the year.

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ARE YOUR FINANCIAL REPORTS TO YOUR BOARD INADEQUATE OR HARD TO UNDERSTAND?

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Victorian Co-operative News

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